IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE J.CHELAMESWAR**

**AND**
**THE HON'BLE MR JUSTICE GHULAM MOHAMMED**

**WRIT PETITION No.10044 OF 2005**

Between:

1. M/s.India Sugar Agencies, 15-2-283, Maharaj gunj, Hyderabad.

Represented by its Prop: Sri Bansilal Agarwal.

2. Sri Bansilal Agarwal, S/o. Late Bhagwan Das Agarwal,

aged about 56 years, R/o: 15-2-283, Maharaj Gunj, Hyderabad.

3. Late Poonam Chand Agarwal (died per LRs Petitioners 4 to 7)

4. Bhagirathi Devi, W/o. late Poonamchand Agarwal,

aged 50 years, R/o: 143/A, Jublee Hills, Roade No.10,

Hyderabad.

5. Ashok Agarwal, S/o: late Poonamchand Agarwal,

aged 40 years, R/o: Now at Hyderabad.

6. Vijay Agarwal, S/o: Late Poonamchand Agarwal,

aged 38 years, R/o: Now at Hyderabad.

7. Sishir Agarwal, S/o: Late Poonamchand Agarwal,

aged 30 years, R/o: 143-A, Jubilee Hills, Hyderabad.

8. Late Madanlal Agarwal, (died per LRs Petitioners 9 to 11.

9. Smt.Punitha Agarwal, W/o: Late Madanlal Agarwal,

aged 23 years, Occu: Business.

10. Mukul Agarwal, S/o: Late Madanlal Agarwal,

aged 25 years, Occu: Business.

11. Tarun Agarwal, S/o: Late Madanlal Agarwal,

aged 21 years, Occu: Business.

Petitioners 9 to 11 are R/o: 3-5-141/3/1/3,

Edenbagh, Hyderabad.

**..... PETITIONERS**

AND

1. Indian Overseas Bank, Adarshnagar Branch,

5-9-30/A, Paiga Plaza Building, Basheerbagh,

Hyderabad – 500 029.

2. The Debts Recovery Appellate Tribunal,

IV Floor, Indian Bank Zonal Office,

55, Ethiraj Salai, Channai.

3. The Debts Recovery Tribunal,

5th Floor, Triveni Complex,

Abids, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, one in the nature of certiorari, or any other writ by setting a side the order dated 07.04.2005 in M.A.No.29 of 2005 confirming the orders in M.A.No.37 of 1999 in O.A.No.441 of 1997 on the file of the 3rd respondent.

**Counsel for the Petitioners : SMT.CH.VEDAVANI**

**Counsel for the Respondent No.: MR.A.KRISHNAM RAJU**

**The Court made the following :**

**O R D E R**

**(Per Sri Justice J.Chelameswar)**

Aggrieved by the order dated 07.04.2005 in M.A.No.29 of 2005 in M.A.No.37 of 1999 in O.A.No.441 of 1997 on the file of the Debts Recovery Tribunal, Hyderabad – 3rd respondent herein, the present writ petition is filed.

The first respondent-bank filed the above-mentioned O.A. for recovery of an amount of Rs.55,35,272/- along with interest. The further details are not necessary for the purpose of the present writ petition. The said O.A. was decreed *ex parte* on 30.06.1998.

Initially the above-mentioned O.A. was filed against petitioners 1, 2, and the deceased, who are shown as petitioners 3 and 8 herein. Petitioners 4 to 7 are the legal representatives of the deceased 3rd petitioner and petitioners 9 to 11 are the legal representatives of the deceased

8th petitioner. Subsequently, M.A.No.37 of 1999 came to be filed by petitioner Nos.1 to 7

herein praying that the *ex parte* order be set aside, which application was dismissed by the Debts Recovery Tribunal -

3rd respondent herein by its order dated 28.01.2005. Aggrieved by the same, an appeal came to be filed in M.A.No.29 of 2005 before the Debts Recovery Appellate Tribunal, Chennai.

We fail to understand as to how the appeal came to be filed by

11 petitioners when the original M.A.No.37 of 1999 itself was filed by only seven petitioners. Insofar as the legal representatives of the deceased

8th petitioner is concerned, there was no application at all to set aside the ex parte order. At any rate, nothing is placed on record to demonstrate before us that the petitioners 8 to 11 also filed an application to set aside the ex parte order.

Be that as it may, by the impugned order, the Appellate Tribunal dismissed the appeal holding that there are no sufficient grounds for interfering with the order under appeal and hence the present writ petition.

The only reason given in M.A.No.37 of 1999 for not contesting the O.A. was that the deceased 4th defendant in O.A. who is a member of the family of the petitioners was seriously ill and therefore they could not contest the O.A.

Except a bald assertion about the sickness of the above-mentioned 4th defendant, no further information as to what was the nature of the sickness and the period during which he was ill is given in the petition.

In the circumstances, the application was rightly dismissed and the Appellate Tribunal rightly confirmed the said order of dismissal. We see no reason to interfere with the impugned order in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

The writ petition is meritless and the same is dismissed at the stage of admission.

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JUSTICE J.CHELAMESWAR

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JUSTICE GHULAM MOHAMMED

28th APRIL, 2005

**PGS**

**To**

1. Indian Overseas Bank, Adarshnagar Branch,

5-9-30/A, Paiga Plaza Building, Basheerbagh,

Hyderabad – 500 029.

2. The Debts Recovery Appellate Tribunal,

IV Floor, Indian Bank Zonal Office,

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**THE HON'BLE MR JUSTICE**

**J.CHELAMESWAR**

**AND**
**THE HON'BLE MR JUSTICE**

**GHULAM MOHAMMED**

**WRIT PETITION No.10044 OF 2005**

**(Per Sri Justice J.Chelameswar)**

28th APRIL, 2005